IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7756 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALDEV AMBALAL PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. K.T.Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. D.R. Kachhavah for the petitioner and learned A.G.P. Mr. K.T.Dave, on behalf of the respondents nos.1, 2 and 3.

1 The detention order dated 18-5-1999 passed by the Commissioner of Police, Baroda City (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the detenu under Section 9(1) of " PASA", copy of which is produced at Annexure "C" inter alia indicate that criminal case vide CR 72/99 was registered against the petitioner-detenu at Navapura Police Station on 7-4-1999 for the offences made punishable under Secs.325, 504 read with Sec.114 IPC and Sec.135 of the Bombay Police Act. That on 20-4-1999 another criminal case vide CR no.82/99 was also registered against the petitioner at Navapura Police Station for the offences punishable under Secs.333,114 of IPC and Sec.135 of the Bombay Police Act.
2.1 The grounds of detention further indicate that three witnesses on assurance of anonymity have given statements dated 18-4-1999 19-4-1999 and 19-4--1999 respectively against the petitioner-detenu with regard to antisocial activities of the petitioner-detenu and have narrated in respect to alleged incidents dated 25-3-1999, 28-3-1999 and 18-3-1999.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the petitioner was released on bail in cases registered against him on 21-4-1999 and 28-4-1999 respectively, however, while passing the impugned order the detaining authority has not given due consideration to the aspect of claiming cancellation of bail or opposing the bail which is granted on 20-4-1999 to the petitioner whereby subjective satisfaction reached by the detaining authority could be said to have been vitiated rendering the impugned order bad in law.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134),

the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case, on scrutiny of the grounds of detention, it appears that vide paragraph 4, the detaining authority has construed the fact that the petitioner was released on bail. However, he has stated that claiming cancellation of bail is likely to consume time and that is why the same has not been followed. The said statement itself suggests non application of mind on the part of the detaining authority because according to material place before the detaining authority, the petitioner detenu was earlier released on bail on 21-4-1999. That on that day the bail was not opposed though investigating officer had information supplied by anonymous witnesses vide their statements dated 18-4-1999 and 19-4-1999. Furthermore, the said bail was granted conditionally and another bail application was moved by the petitioner in respect to CR no.82/99 on 28-4-1999. That means on 28-4-1999, the investigating officer could have opposed the bail in the matter of 82/99 and could have claimed cancellation of bail in the matter of CR 72//99 on the basis of the material produced before the detaining authority. Thus, on account of non application of mind, the subjective satisfaction reached by the detaining authority stands vitiated and has rendered the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 18-5-1999 passed by the Commissioner of Police, Baroda City (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Baldev Ambalal Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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